

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2019

C O R A M

THE HONOURABLE Mr.JUSTICE S.M.SUBRAMANIAM

WP.No.2453 of 2018
and WMP.No.2974 of 2018

V.Krisnamoorthy

...Petitioner

Vs.

1. The Superintending Engineer,
TamilNadu Generation and Distribution Corporation Ltd.,
Kallakurichi Electricity Distribution Circle,
Kallakurchi.
 2. The Executive Engineer, Operation and Maintenance,
TamilNadu Generation and Distribution Corporation Ltd.,
Kallakurichi Electricity Distribution Circle,
Thirukovilur.
 3. The Junior Engineer, Operation and Maintenance,
Office of the Assistant Engineer, (O&M),
TamilNadu Generation and Distribution Corporation Ltd.,
Kallakurichi Electricity Distribution Circle,
Rishivandiyam
- ... Respondents

PRAYER:Writ Petition filed under Article 226 of the Constitution of India to issue a writ of cetiorarified mandamus to call for all the records of the 1st respondent pertaining to his proceedings in Ku.Aa.No.347/May.Po/KamiPaVa/Kallai/Ni.A /Ni.Pi.I /Vu.2/Ko.Ka.Vu.Mu. Pa/2017-3 dated 11.01.2018 and quash the same as illegal, violation of principles of natural justice and without application of mind and consequently direct the 1st respondent to permit the petitioner to work in the promotion post of wireman as per the promotion order dated 30.12.2017 passed by the 2nd respondent vide his memo in Ku.Aa.No.Say. Po/E&Pa/Thiruk/Vu.Ni.A/Ni.May/Vu-1/KoKambi (Pa.Vu)/A.No. 263 / 2017 with all attendant benefits.

For Petitioner : Mr.G.Anandakumar
for M/s.Thamizharasi Law Firm

For Respondents : Mr.M.Fakkir Mohideen
Standing Counsel for EB.

O R D E R

The impugned order of cancellation of promotion granted mistakenly to the writ petitioner is under challenge in the present writ petition.

2. A plain reading of the impugned order reveals that the writ petitioner Mr.V.Krishnamoorthy was mistakenly promoted to the post of Wireman during the pendency of departmental disciplinary proceedings and therefore, the said promotion order was cancelled. The promotion order was granted vide proceedings dated 30.12.2017 and the order of cancellation was passed on 11.01.2018, within a period of ten(10) days from the date of promotion order. Thus, the learned counsel for the respondent states that it is an order of promotion, which was passed erroneously and mistakenly, and therefore, within a period of ten(10) days, the error was identified and the said promotion order granted to the writ petitioner, promoting him to the post of Wireman, was cancelled.

3. The learned counsel for the writ petitioner submitted that undoubtedly, the order of promotion was issued to the writ petitioner on 30.12.2017, and therefore, the cancellation of promotion could be issued only after providing an opportunity to the writ petitioner and by issuing a show cause notice.

4. The question of issuing show cause notice does not arise with reference to the facts and circumstances of the present case. The writ petitioner himself was aware of the fact that departmental disciplinary proceedings was pending against him. When a public servant is very much aware of the pendency of disciplinary proceedings, such pendency is a bar for promotion. Therefore, a promotion order issued mistakenly would not confer any right on such public servant. The order issued on mistake or otherwise are liable to be cancelled.

5. In the present case on hand, the order of promotion was issued on 30.12.2017 and the authorities competent found that disciplinary proceedings were not concluded and therefore, the writ petitioner was not eligible for promotion. Hence, the impugned order of cancellation was issued on 11.01.2018.

6. This Court is of an opinion that a public servant must always be truthful and maintain a good conduct through his actions, both inside the office and outside of it. A public servant enjoys a special status in the society. By virtue of his status, he is expected to conduct himself as a upright person and maintain integrity and honesty. A public servant who is facing departmental disciplinary proceedings, even in case of issuing a mistaken promotion order, is supposed to inform the

higher authorities.

7. In the present case of hand, within a period of ten(10) days from the date of issuance of order of promotion, the said promotion, granted mistakenly, was cancelled. This being the factum of the case, the present writ petitioner deserves no merit consideration.

8. It is made clear that the order of cancellation of promotion which was made on the specific ground that the same was issued by mistake during the pendency of the disciplinary proceedings would not confer any right or cause prejudice to the right of the writ petitioner to agitate his claims in accordance with law.

9. Accordingly, this writ petition is dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

msv

+1cc to Mr.Thamizharasi Law Firm Advocate, S.R.No.9932

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